



April 12, 2005

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Statements

Senate Floor Remarks of Sen. Lamar Alexander on the judicial nomination process

April 12, 2005

Mr. President, I am the Senator from Tennessee, and we know something about country music in our State. There is an old country music song with the line that goes something like this: "There is light at the end of the tunnel and I hope it ain't no train."

I am beginning to think it is a train and that there is not much way to avoid a train wreck. The train wreck I am talking about is a threat by the minority to "shut the Senate down in every way" if the majority adopts rules that will do what the Senate has done for 200 years, which is to vote up or down the President's appellate judicial nominees.

Until recently, not to vote at all on a President's judicial nominee was unimaginable. Take the case of Clarence Thomas in 1991: The first President Bush nominated him to the Supreme Court of the United States. I haven't seen any debate in this body with as much passion in it as the Thomas nomination. But he was nominated in July, the Senate voted in October 52 to 48, and it was done. Yet, in the last session of Congress, for some reason that escapes me, the minority felt it had to use the filibuster to

deny an up-and-down vote 10 times on 52 of the President's appellate judicial nominees. That has never happened before. There are a lot of ingenious arguments being made on the other side, but that has never happened.

Some people mention Abe Fortas in 1968 - I was here then - I was working for Howard Baker in the Senate. The votes against Fortas were in the majority. But even if you give that to the other side, neither party has ever used the tactic of denying an up-or-down vote on judicial nominees in 200 years.

The argument that the Senate doesn't have the power to change this procedure would get thrown out of court in a summary judgment. From 1789 when the Senate first met and adopted its rules by majority vote, it has adopted its rules by majority vote as the Constitution provides.

The nominees who the President put up - who were rejected - were badly abused. Charles Pickering, from Mississippi, was accused of not being sensitive to civil rights. In 1967, he put his children into desegregated schools in the middle of Mississippi. He testified in court against the grand wizard of the Ku Klux Klan, who was described by Time Magazine as the most evil terrorist in America.

Bill Pryor, not sensitive on civil rights? Too conservative? Bill Pryor was law clerk to John Minor Wisdom in New Orleans, as the Presiding Officer knows, perhaps the leading civil rights judge in the South during the 1950s, 1960s, and 1970s, and Bill Pryor has repeatedly demonstrated he can separate his views from his judicial judgments. Most recently he was part of the court - by his recess appointment - that rejected an appeal on the Terri Schiavo case. I don't know how he felt personally about it, but he felt under the law there was no recourse in Federal courts. Chairman Arlen Specter has sent a certain memorandum around to Members asking us to look at Priscilla Owen's real views on *Roe v. Wade*. She hasn't said she wants to overturn *Roe v. Wade*.

The question is not whether the Senate has the power to adopt the rules by majority vote -- it unquestionably does; that is common sense -- but whether we should.

I am one of the Republicans who believe such a rules change is not a good idea -- not good for the Senate, not for the country, not for Republicans, and not for Democrats. The Senate needs a body that by its procedures gives unusual protection to minority rights.

Alexis de Tocqueville, in the early 19th century, warned of the tyranny of the majority. In South Africa we saw a political miracle when the new Black majority respected the property rights of the White minority. In 1967, when I came here -- and I see the Republican whip here; he came about a year or two later -- the Republicans were the ones worrying about protecting minority rights. There were 64 Democrats and 36 Republicans then. There were 38 Republicans in 1977 when I came back working with Howard Baker, and in 1979, when Senator Byrd eloquently argued the majority could make Senate rules, there were only 41 Republicans, so the Republicans were worrying about minority rights.

But minority rights can also be abused. Remember what the filibuster was used for in the 1930s, the 1940s, the 1950s, and the 1960s. The filibuster was used to deny Black Americans the right to vote. It was used to keep the poll tax. It was used to stop a Federal anti-lynching law. It was used to keep African Americans from sitting down and having lunch in Nashville. So the filibuster can also be an abuse of minority rights.

It is not my job to advise the Democrats, and I wouldn't presume to do it, but I believe it is a mistake for the Democrats to provoke a rules change, and I believe it is a bigger mistake, as they have threatened, to "shut down the Senate," when it happens. Last month, three dozen Democrats stood on the steps of the Capitol and basically threatened to do that. On December 13, in the Washington Post, the Senator from New York, Mr. Schumer, said that the use of the nuclear option would "make the Senate look like a banana republic... and cause us to try to shut it down in every way."

Consider what the Senator from New York is saying. Not only will the minority not allow a vote on judges up or down in a country where the rule of law is of paramount concern, but they will shut the Senate down in every way at a time when natural gas prices are at \$7, shut the Senate down in every way at a time when oil prices and prices at the pump are at record levels, shut the Senate down in every way when there is a Federal deficit that needs to be brought under control, shut the Senate down in every way when the immigration laws need fixing, and shut the Senate down in every way while we are at war.

I don't believe the American people like the idea of Washington politicians threatening to shut the Senate down in every way. As I remember, the last prominent political leader who said something like that was my friend, Newt Gingrich, 10 years ago. It backfired, and he was out of office in about a year.

The people expect us to go do work, to do our jobs. They expect us to vote on judges, to lower natural gas prices, to reduce the deficit, to fix the immigration laws, and to win the war on terror. We cannot do it if part of the Senate wants to shut the Senate down in every way.

Our Senate leader, Bill Frist, has been working hard to avoid this train wreck. I still hope we can avoid it. I believe my colleagues in this body know the enormous respect I have for the new Democratic leader, Harry Reid. He and I worked together on American history. I had the privilege of being with him in a delegation for 8 days in Palestine, Israel, Iraq, Kuwait, Georgia, Ukraine, and France, and not once in those 8 days did the Democratic leader undercut the policies of the President of the United States. He conveyed the U.S. position. I am not surprised by that. That is the way it should be. But I am impressed by that. I am impressed by the Democratic leader. I am convinced he and the majority leader can make this Senate do its job if given the chance.

We need to avoid this train wreck if there is a way to do it. Twice I have offered in the Senate my suggestion about how I as one Senator could do it. I said 2 years ago

that I would give up my right to filibuster a President's nominee for an appellate judgeship even if it were President Kerry or President Clinton or President Reid or any other Democrat. I might vote against that nominee, but I would never filibuster as long as I were a Senator.

Now, if six Democrat Senators and six Republican Senators would say the same thing, then there would be no need for a rules change, and there would be no need for a train wreck. All we need are six Democrat Senators and six Republican Senators who believe there ought to be up-or-down votes regardless of the President's party and who believe it would be wrong to shut the Senate down. The right thing to do is to have an up-or-down vote on any of the President's Federal appellate judicial nominees. That has been the way we have done it for 200 years. The wrong thing to do is to shut the Senate down in every way. I yield the floor, and I suggest the absence of a quorum.

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Senate Floor Statement of Senator Jim DeMint, April 12, 2005

“Mr. President, I rise today to address the current institutional crisis in the Senate brought on by insistence of a few on defeating the will of the American people and preventing the Senate from doing its job of voting on the President’s nominees to the federal bench.

“We all know that the Constitution is very clear on this front – judicial nominees are chosen solely by the President, with the advice and consent of the Senate. Until President Bush was elected, no one has ever interpreted this requirement to mean anything other than a simple majority vote. The Senate has never denied an up-or-down vote to any appellate court nominee who had majority support.

“But the Democrats have rejected this 200-year-old Senate tradition, and with it the very will of the American people. The Democrats lost the elections and they seem unwilling to accept that fact, so instead they just have unilaterally changed the rules and politicized the judicial confirmation process. This is extreme behavior and extreme tactics – threatening to shut down the Senate if we should dare to confirm a well-qualified nominee with bipartisan majority support. This is the epitome of arrogance – assuming they know better than the majority of their colleagues and the President. The people back home want to see these nominees treated fairly and given an up-or-down vote.

“Is it fair to say a nominee is “out of the mainstream” when she has the support of Democrats and Republicans making up a majority of the Senate? I submit to you that it is the obstructionists that are “out of the mainstream” when they block an up-or-down vote on the nomination of Justice Priscilla Owen for over four years.

“Extreme – arrogant – out of the mainstream – this is the “anything goes” Senate Democrats, willing to go to any length to deny exemplary judges the opportunity to dedicate their lives to the service of the American people as federal judges. By trying to shred the reputations of some of the most respected and admired judges and public

servants in this country, a few Senators are sending a very powerful message to any others who may aspire to the bench – don't bother. For it appears to be increasingly likely that such talent, dedication, and personal sacrifice will be rewarded with attacks on the floor of the United States Senate and years of uncertainty while a bipartisan majority waits, powerless to confirm your nomination.

“Mr. President, I call for a return to tradition. The American people have done their jobs and expect us to do the same. We here in the Senate need to do our jobs and confirm fair judges through a fair process.

“I thank you, Mr. President, and yield the floor.”

Senator Santorum Comments on Judicial Filibusters

Washington, D.C.-Senator Rick Santorum (R-PA), chairman of the Senate Republican Conference, today issued the following statement regarding Senate Democrats' continuing efforts to permanently block up-or-down votes for President George W. Bush's appeals court nominees.

"I am concerned that a partisan minority of Democrats are threatening to shut down the Senate if Republicans act to restore Senate tradition for simple-majority votes. Their rhetoric is out-of-control and counterproductive. Instead of politicizing the process by holding more public demonstrations, the Democrats need to demonstrate they can negotiate in good faith to restore a fair process that allows all Senators to vote on these nominees."

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Transcript of Senate Majority Leader, Pre Policy Lunch- 4/12/05

QUESTION: Senator Frist, can I get your update on the situation with the judges? And I know that during the recess you've sent Leader Reid a letter saying that you were going to make an offer to keep from having to use the Constitution or a nuclear option. What's that status on that? Have you made your formal offer yet?

FRIST: The question is on judges, and I think the last time I was at the microphone here I said we need to lower the rhetoric.

For the life of me, I can't understand how we benefit moving America forward and we have the other side of the aisle talking about shutting down government. It baffles me.

All of you know that we're struggling right now with an assault on over 220 years of Senate tradition by the Democrats filibustering circuit court nominees, thus denying us the reasonable responsibility of an up-or-down vote to give advice and consent. And as an institution, we, meaning Democrats and Republicans, are struggling how to resolve that.

Last year, I made a proposal that was marked up in the Rules Committee that was rejected, a Frist-Miller approach which had a declining number of cloture votes required, ultimately leading to a 51 majority vote decision as to whether or not there's confirmation of judicial nominees. That was rejected.

My comments a week ago or two weeks ago that I continue to work with the Democratic leader is just that. We're going to continue to work a proposal. We've made some time in the near future. I want to get the proposal as close as we possibly can and then that will be made.

Meanwhile, the Judiciary Committee is working very effectively. Chairman Specter is doing a very good job in overseeing the Judiciary Committee and bringing some judges through that we can look at hopefully here in the future.

I'll just go back and say this is about principle, it's about our constitutional responsibility, it's about advice and consent. Therefore, comments that try to make this partisan, this shut down the government strategy I don't fully understand.

At the end of the day, I fundamentally believe that advice and consent under the Constitution of the United States of America means that we should be given the opportunity to vote -- the opportunity to vote.

FRIST: And that's all that we're asking for. We're going to continue to work in that regard.

QUESTION: On the filibuster, could you give us an idea? Do you think they will have 51 votes?

And at this point, what kind of concerns are you hearing from some members who are kind of skittish about going that route?

FRIST: This is back on the judges issue. Again, I just want a reasonable up-or-down vote on the judicial nominees that come to the floor, and let people vote yes or no, but to give advice and consent, which is our constitutional responsibility -- is something that we absolutely must have.

FRIST: Questions, again, are going to be: Do you have votes to change that, and where are the numbers? And I'm just not going to go there.

I will say that the other side of the aisle has heightened the rhetoric. And you've heard me appeal again and again here, standing at this microphone, "Let's keep the rhetoric down, let's continue to work together, let's recognize that your views are different than our views," talking to the other side of the aisle, "and let's try to resolve things together."

We've seen over the last three weeks on the other side of the aisle pretty aggressive press conferences. We've seen radio addresses. We've seen paid advertising on the outside.

You know, I'm not sure exactly how to respond except that we're going to be fighting for the principle, and we're going to do it in a way that is respectful.

I do feel that we need to do a better job at this juncture in getting information out to all of you, because all of you are covering, appropriately so, what they are saying, while I'm sitting here trying to work across the aisle. Our voice is being lost.

So I hope over the next two weeks I'll be able to do a better job getting you information so you will look at the 200 -- not you, I'm talking to the American people -- that the American people will fully understand that the nuclear option was what the Democrats did in the last Congress when they destroyed 220 years of Senate precedent and history by for the first time in the history of the country taking nominees that had majority support and applying a filibuster to not just postpone, but to kill those nominees, or to try to kill them.

QUESTION: You said the other side has heightened the rhetoric. And some people on the right, including Senator Coburn's chief of staff, (OFF-MIKE) mass impeachment of federal judgments. Tom DeLay and Lamar Smith on the House side talked about impeachment. Some conservative activists, including (OFF-MIKE) Justice Kennedy as someone who should be impeached.

Is your side responsible for heightening the rhetoric?

FRIST: One of the problems -- and it may be that I've tried to push this so far through either rule change, through negotiation, through working with the other side, that from a leadership standpoint, we've held back, which has allowed the vacuum to be filled by lots of other voices.

FRIST: And I hope what you will see over the next several weeks is us to do a better job, not in response to the fact the other side of the aisle, they said, "We're going to shut down the government." And that sort of rhetoric is just not helpful to what we're trying to do on the floor of the United States Senate, when you look at the civility and you look at trust and you look at working together.

And all I can say, without sort of speaking to other things that are said, we're talking about principle, we're talking about the Constitution of the United States of America, we're talking about an oath that we all took to that Constitution. And there's no way to give advice and consent if you are locked down by the other side of the aisle, for the first time in history, and not be given that opportunity to vote up or down.

And you'll hear, I think over the next several weeks, much more of that, looking at the to imbue everything around here.

Amy Call
Office of the Senate Majority Leader
202-224-1865